

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: OCTOBER 14, 2014

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: **AGENDA ITEM #5** – Adoption of LAFCO Resolution No. 3190 for LAFCO 3157 – Sphere of Influence Establishment for County Service Area 120 (Habitat Conservation and Historical Resources – North Etiwanda)

RECOMMENDATION:

Staff recommends that the Commission:

1. Amend determination provided at the September 17, 2014 hearing related to Government Code Section 56425(e)(3) as to the amount of endowment funds to be returned to the balance for Unit 2 properties and its related condition; and,
2. Adoption of LAFCO Resolution No. 3190 reflecting the Commission's determinations.

BACKGROUND INFORMATION:

At the September 17, 2014 hearing the Commission considered LAFCO 3157 – Sphere of Influence Establishment for County Service Area 120. This concluded a four year process with the Commission making the mandatory determinations required by Government Code Section 56425 et seq and approving the modification requested by the County of San Bernardino at the February 20, 2014 hearing. Attachment #1 to this report provides the draft resolution reflecting the Commission's determinations and Attachment #2 is a copy of the staff report from the September hearing. In addition, it was determined by the Commission to impose five conditions on the sphere establishment, identified below, to address questions related to solvency, operational issues, and management of endowment funds:

- Within six months of the approval of the sphere of influence establishment County Service Area 120 shall have completed the due diligence process with the California Department of Fish and Wildlife to be declared an available recipient of mitigation properties in the future. Failure to do so will require a further analysis of the sphere of influence assignment.

- Within six months of the approval of this sphere establishment County Service Area 120 shall have completed all reporting required by State law for the management of mitigation properties.
- Within six months of the approval of this sphere of influence establishment County Service Area 120 will have developed funding plans to restore endowment balances for those mitigation properties where mitigation work has not been performed but interest earnings used.
- Within six months of the approval of the sphere of influence establishment for CSA 120, management of the County Special Districts Department shall develop a mechanism to provide for the maintenance and operation of the improvements constructed through the 2008-09 State Park grant without use of the endowment funds established for mitigation purposes only.
- Direct LAFCO staff to provide ongoing monitoring of the completion of these activities with periodic updates to be provided to the commission.

At the September hearing, the manager of County Service Area 120 expressed questions regarding the amount of interest earned to be returned to the endowment fund. LAFCO staff had identified on page 10 of the report (copy included as Attachment #2) that \$112,884 was to be returned. County Special Districts staff identified the Department's concerns that the statute specifically stating that the interest earned could not be consolidated for use did not take effect until January 2012; therefore, should not be applied retroactively. Since the hearing, LAFCO staff has been in consultation with Special Districts staff on this issue.

While staff believes its position is legally defensible given the contractual nature of the endowment funds for use for maintenance and preservation of specific properties going back to the acquisition and agreement for conservation, that position does not assist this agency in achieving compliance with the statute. The adoption of the updated Cooperative Management Plan in October 2010 by the County Board of Supervisors clearly identifies the division of the areas into Unit 1 – the original North Etiwanda Preserve Properties and Unit 2 – all other properties acquired for habitat conservation purposes. Therefore, we are modifying our determination to reflect the need to redeposit the interest earnings for Fiscal Years 2010-11, 2011-12, 2012-13 and the amount to be determined by the audit for Fiscal Year 2013-14 now due.

In addition, Special Districts staff questioned the \$17,517 shown for Fiscal Year 2012-13 as interest earned and wished this amount to be modified. LAFCO staff identified that the amounts were taken from the audits accepted for CSA 120 and unless the audit was amended to reflect an adjustment no change in the information presented would be made. On Wednesday, October 8, LAFCO staff received a revised version of the 2012-13 audit for CSA 120 prepared by its outside Auditor, Gruber and Associates (copy included as

Attachment #3). In the revision the interest earned during Fiscal Year 2012-13 was reduced to \$6,844 (with \$10,683 identified as “*Net increase in fair value of investments*”).

The chart which follows reflects these modifications showing the need to repay \$14,815 for audit years identified, which is to be adjusted once the new audit for Fiscal Year 2013-14 is completed.

Name of Owner	Date Acquired	Total Acreage	Endowment Funds Received	Interest Earned by Endowment Funds for Specific Properties						Total Interest by Conservation Property	% of Total Interest from 2008-13
				2008	2009	2010	2011	2012	2013		
UNIT #1 - CSA 120 MANAGEMENT PLAN											
SANBAG	2/27/1998	762	\$700,000	\$33,073	\$23,262	\$16,037	\$6,015	\$2,793	\$2,983	\$84,163	43.94%
UNIT #2 - CSA 120 MANAGEMENT PLAN											
Lennar Communities	10/21/2003	33	\$85,600	\$3,759	\$2,643	\$1,822	\$731	\$339	\$363	\$9,657	5.04%
A&J Resources and Rancho Etiwanda 685 LLC	3/1/2004	172	\$220,000	\$10,523	\$7,402	\$5,103	\$1,890	\$877	\$938	\$26,733	13.96%
Granite Homes/ Rancho 2004 LLC	9/13/2005	86	\$215,400	\$10,523	\$7,402	\$5,103	\$1,849	\$858	\$917	\$26,652	13.92%
CENTEX Homes	10/2/2005	149	\$373,250	\$17,288	\$12,160	\$8,383	\$3,201	\$1,486	\$1,588	\$44,106	23.03%
Western Slope & Mineral Company	12/14/2010	5	<u>\$12,500</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$110</u>	<u>\$51</u>	<u>\$55</u>	<u>\$216</u>	<u>0.11%</u>
Total Interest Earned				<u>\$75,166</u>	<u>\$52,869</u>	<u>\$36,448</u>	<u>\$13,796</u>	<u>\$6,404</u>	<u>\$6,844</u>	<u>\$191,526</u>	<u>100.00%</u>
Total Non-Wasting Endowment			<u>\$1,606,750</u>								
Interest for Unit #2				\$42,093	\$29,606	\$20,411					
Interest to be returned to Endowment for Unit #2 due to lack of work performed on specific properties							\$7,281	\$3,611	\$ 3,860	<u>\$14,752</u>	

It is the staff's position that even with the reduction in interest to be returned by \$98,132 it does not the alleviate concern for the future operation of this County Service Area. Significant work remains to address the conditions identified and approved by the Commission and staff will keep the Commission apprised of its progress.

Staff requests that the Commission take the actions outlined on page 1 to amend the determination on interest to be returned to the endowment fund and adopt Resolution No. 3190 reflecting its determinations.

KRM/

Attachments:

- (1) [Draft LAFCO Resolution No. 3190 for LAFCO 3157](#)
- (2) [Staff Report Dated September 10, 2014 for LAFCO 3157](#)
- (3) [Revised Audit for County Service Area 120 Received October 8, 2014](#)